

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
MAR - 4 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of the Commission's Rules) WT Docket No. 96-6
To Permit Flexible Service Offerings)
in the Commercial Mobile Radio Services)

DOCKET FILE COPY ORIGINAL

COMMENTS OF AMERITECH

I. Introduction

Ameritech respectfully submits these Comments in the above-captioned matter, and supports the continued efforts of the Federal Communications Commission ("Commission") to facilitate the development of full and fair competition in all aspects of the telecommunications marketplace, including local exchange services.¹ In order to meet its continuing objective of reliance upon market-based incentives,² the Commission should strive to reflect parity in its treatment of similarly-situated services and providers. The necessary result is that, to the extent

¹ In this matter, the Commission indicates that its proposal "should increase competition within wireless services and promote competition between wireless and wireline services." NPRM, at 3 (¶ 1).

² The Commission most recently stated this objective as "creating or replicating market-based incentives ... for both suppliers and consumers." In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, Notice of Proposed Rulemaking (rel. January 11, 1996), at 4 (¶ 4).

No. of Copies rec'd. 279
List ABCDE

wireless technologies are used to provide a substitute for wireline local loops and other local exchange services, both wireless and wireline technologies must be afforded equal regulatory treatment. To arbitrarily favor one technology over others would foster economically inefficient competition and permit some providers to gain unfair marketplace advantages unrelated to price, value, or functionality as those factors are considered by consumers. For this reason, the rules governing Commercial Mobile Radio Services ("CMRS") should be amended to explicitly permit wireless loop applications.

The recently-enacted Telecommunications Act of 1996 charged the Commission with considering the question of regulatory parity between CMRS and wireline local exchange service.³ The Commission should execute this charge in the instant proceeding by stating that where wireless technologies are used to provide services which are substitutable for wireline local exchange services, the same duties and responsibilities should be borne by wireline and wireless-based providers alike.

II. The rules governing CMRS should be amended to explicitly permit wireless loop applications

The rules governing Personal Communications Services ("PCS") are admittedly somewhat vague as to the nature of the services permitted within the associated spectrum allocation. As noted in the NPRM, the broadband

³ Telecommunications Act of 1996, 47 USC 153(a)(2)(44).

PCS rules currently provide that "fixed services ... may be provided if ancillary to mobile applications."⁴ While this language was included to facilitate the introduction of applications like wireless loops within the spectrum allocation for PCS, the resulting uncertainty created by the language of the rule may be serving to "hinder carriers from quickly and economically using channel capacity to meet changing market demand."⁵ The Commission should harness the inherent power of evolving market demand for wireless services by clarifying in its rules that wireless local loop applications are permitted in the spectrum allocated for broadband PCS services.

For the same reasons, since services currently offered by other types of CMRS providers have been held by the Commission to be "substantially similar" by virtue of existing or potential competition among them,⁶ the rules governing cellular and specialized mobile radio ("SMR") services should also be revised to explicitly permit use of the radio spectrum allocated for those services for wireless local loop services.⁷

⁴ NPRM, at 9 (¶ 12); 47 CFR §24.3.

⁵ NPRM, at 9-10 (¶ 13).

⁶ See, e.g. NPRM, at 10 (¶ 16).

⁷ As noted in the NPRM, this would require modification of the cellular restriction (at 47 CFR §22.923) on fixed base-to-base cellular communications, as well as 47 CFR 90.419's limitation on SMR operation between base stations at fixed locations. NPRM, at 11 (note 32).

III. Regulation of similarly-situated services should be the same, independent of serving technology

Ameritech voices its continued support for the Commission's efforts to "ensure that economic forces -- not disparate regulatory requirements -- shape the development of the CMRS marketplace."⁸ However, as the Commission "takes additional steps to foster competitive local exchange service" in this proceeding,⁹ care should be taken to follow the same principle across all similarly-situated services, which, in the case of wireless local loop applications, includes both wireless and wireline local exchange services. To favor one specific technology over another by awarding an arbitrary regulatory advantage would subvert the natural operation of marketplace forces, and lead to inefficient deployment of network technologies, just as surely as favoring one wireless service over another would skew competition among CMRS providers offering equivalent services. Only if substitutable, similarly-situated services are, to the fullest possible extent, subject to the same regulatory scrutiny and structure will competition be driven directly by consumer demand rather than regulatory fiat.

Market demand has often been the driver for technological progress in traditional wireline telephony, which continues to migrate from purely copper facilities to fiber optic media and coaxial cable.¹⁰ Such has also been

⁸ NPRM, at 12 (¶ 20).

⁹ NPRM, at 7 (¶ 9).

¹⁰ To be certain, the supply-side effects of advancing technology and its impact upon the economics of deployment are, and will continue to be, a factor in this migration to new,

the case in wireless technologies, as noted in the broadband PCS proceeding, in which the Commission discussed using PCS and other emerging technologies to eliminate the scarcity of spectrum as a constraining factor on the ability of providers to meet exponentially-increasing customer demand for new services. Even more recently, the Commission promulgated rules for Local Multipoint Distribution Service ("LMDS") that expressly recognized the technical feasibility of using the 28 GHz band, which was originally conceived as a video distribution allocation, to "provide services that compete with local exchange carriers in the provision of local exchange service" ¹¹

As suggested by the Commission, fixed services other than traditional telephony can also be accommodated in CMRS spectrum. Indeed, wireless Internet access, point-of-purchase credit card verification, and remote monitoring services are all feasible and are already being provided. These and other services should be accommodated in the proposed definition of wireless local loop as "the path between the subscriber and the first point of switching or aggregation of traffic." ¹²

To this end, the Commission should facilitate the evolution of true economic competition among all fungible services and technologies by

advanced media. However, the power of demand-side forces such as consumer bandwidth requirements and population growth patterns have always been important in this regard, and will likely be increasingly important in the foreseeable future.

¹¹ NPRM, at 7 (¶ 9). LMDS was the Commission's first explicit recognition of the convergence not only of wireless and wireline serving technologies, but also of video and data transport and voice telephony in the same service.

¹² NPRM, at 6 (¶ 6).

removing artificial regulatory distinctions between technologies. If consumers cannot tell the difference between wireless and wireline serving technologies (as will doubtless become apparent in the near future as providers of these and other applications use a variety of infrastructures), there can be no justification for hindering the development of economically efficient competition by differentiating among them in the regulatory regime imposed upon each.

IV. The Telecommunications Act of 1996 charged the Commission with implementing parity between wireless and wireline services

In the recently-enacted Telecommunications Act of 1996, Congress directed the Commission to consider some of the very issues which the Commission has raised in this matter. Congress' direction took the form of a definition of a local exchange carrier which, by its terms, includes Commercial Mobile Service ("CMS") providers "to the extent that the Commission finds that such service should be included in the definition of such term."¹³ Under the Act, the result of a finding that, to the extent CMRS providers provide wireless local loop (and other services that are substitutes for local exchange services), they should be considered local exchange carriers ("LECs") is that the duties borne by all LECs will, quite appropriately, be equally imposed on such CMRS providers with respect to those substitutable

¹³ Act, §153(a) (2) (44).

services, as they are on the LECs with which the CMRS providers compete for customers.

The Commission's stated principles of parity and reliance upon the natural forces of the marketplace rather than regulatory handicapping dictate this result. Moreover, a heavy burden of proof should be borne by those who will, no doubt, selfishly argue that they are exempt from the obligations which the Act attaches to LEC status, or from any related Universal Service obligations which the upcoming Federal-State Joint Board may recommend under the Act.¹⁴ If the Commission were to adopt a system of differential treatment of certain technologies, it would send a clear signal that carriers could easily evade the public policy obligations imposed by Congress by carefully selecting their serving technologies so as to avoid any obligations they choose not to assume.

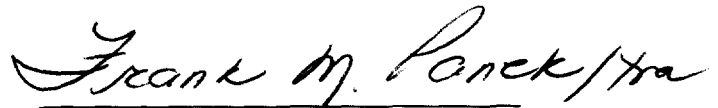
V. Conclusion

For the reasons set forth above, the Commission should revise the service definitions for cellular, broadband PCS and SMR services to explicitly permit wireless local loop applications within their associated spectrum allocations. Furthermore, this action should be accompanied by a finding that, to the extent CMRS providers use their licensed spectrum to provide wireless local loop and any other services which are substitutable for local exchange services, those CMRS providers should be considered local

¹⁴ Act, §254.

exchange carriers for all purposes of the Act. This approach will ensure parity of regulatory treatment among similar services, and will avoid the market distortions which would unavoidably result from arbitrarily favoring one set of technologies over another.

Respectfully submitted,

A handwritten signature in cursive script, reading "Frank M. Panek".

Frank Michael Panek
Attorney for Ameritech
Room 4H84
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025
(708) 248-6064

Dated: March 1, 1996